

**MARYLAND COURT OF APPEALS PROFESSIONALISM COMMISSION**  
**FIRST MEETING, MARCH 31, 2004 at 4:00 p.m.**

On March 31, 2004, at the Judicial Training Center in Annapolis, Maryland, the newly formed Court of Appeals Professionalism Commission held its first meeting. The primary purposes of the meeting were to discuss the Recommendations of the Professionalism Task Force and to have the Commission members indicate their preferences for subcommittee assignments.

Chief Judge Bell opened the meeting. He emphasized that he is not a member of the Commission but that he would be visible in the process because he believes that improving professionalism is an important undertaking. Chief Judge Bell thanked Judge Battaglia and other members of the Commission. He noted that the Commission has an opportunity to improve civility in the legal profession as well as in the community.

Judge Battaglia welcomed the Commission and thanked Jacqueline Lee, her assistant, who had worked to prepare the materials for the meeting. Judge Battaglia also introduced her law clerks and summer interns. The Judge noted that the summer interns would be available to work on Commission tasks during the summer.

Judge Battaglia provided a background of the formation and direction of the Commission, describing the Professionalism Task Force and its town hall meetings. She noted that the Task Force had observed that many attorneys had lost hope and were disappointed in how the legal profession is perceived and that many were very pleased with their role as lawyers. As a result of the town hall meetings, she stated, the Professionalism Task Force issued the Task Force Report, which reflects the Task Force's recommendations. She stressed that the Task Force recommendations were reached by consensus.

Judge Battaglia explained that the Commission will focus on the Task Force's recommendations and decide how to proceed to address each recommendation. She then circulated subcommittee sign-up sheets, asking Commission members to sign-up for the subcommittee they preferred. The subcommittees, Judge Battaglia noted, will provide a methodology for studying each recommendation. Recommendations will then be derived from the subcommittees' study results and submitted to the Court of Appeals.

At Judge Battaglia request, the Commission members introduced themselves by identifying which jurisdiction or organization they represented and whether they had served on the Task Force.

Judge Battaglia then turned to the matter of the Task Force Recommendations. Judge

Battaglia first discussed Recommendation 2, which recommends an elevated role for judges in promoting professionalism. The recommendation that judges become role models for professionalism is a departure from the old concept that judges should remain isolated from the bar and community. According to Judge Battaglia, the Task Force felt that judges' participation improves the perception of the bar. The subcommittee devoted to this Recommendation will have to reconcile this.

As to Recommendation 3, which suggests the Commission identify indicia of professionalism, Judge Battaglia stated that professionalism is more than ethics. The Commission must decide what it means to be professional as a lawyer.

Recommendation 4, Judge Battaglia stated, directs the Commission to develop professionalism guidelines and sanctions. The Judge noted that the issue of sanctioning unprofessional conduct arose at every town hall meeting. The subcommittee must consider whether the current system for sanctioning unprofessional behavior is sufficient. If it is not, Judge Battaglia stated, the Commission should propose new guidelines and sanctions that can be implemented practically and that will survive appellate scrutiny.

The Judge stated that discovery abuse, addressed by Recommendation 6, was a topic at every town hall meeting and is an issue that appears throughout the state. Some attorneys at the town hall meetings expressed concern that most discovery abuse occurred when they dealt with lawyers from outside of their county. Other attorneys, according to Judge Battaglia, believed that the "abusers" were the ones who benefitted by the abusive tactics. The subcommittee studying Recommendation 6, Judge Battaglia noted, should consider how lawyers and judges can deal with discovery abuse.

Recommendation 7 proposes the appointment of Discovery Masters to address discovery disputes. Judge Battaglia stated that this recommendation came from the Task Force's observation that Circuit Court Judges do not have enough time to deal immediately with discovery disputes, sometimes causing discovery disputes to last for months.

Recommendation 8 relates to sanctions, either formal or informal, to deal with unprofessional conduct.

Judge Battaglia then described Recommendation 9, noting that the subcommittee assigned to it should study whether a professionalism course is needed for experienced attorneys. The Judge stated that the Task Force did not recommend such a course for all experienced attorneys but, rather, suggested a remedial course for particular offenders. Judge Battaglia further noted that not all members of the Task Force agreed that the current course for newly admitted attorneys was appropriate for attorneys who frequently behave

unprofessionally. Another study that the subcommittee should undertake was whether the course for newly admitted attorneys needs to be overhauled to make it more useful.

Regarding Recommendation 10, Judge Battaglia stated that a subcommittee should study how to address the unauthorized practice of law. She stated that many of the Task Force members felt that there has been a rise in unprofessional conduct because lawyers feel threatened by those practicing law without a license.

Recommendation 11 deals with mentoring. Judge Battaglia said that the Task Force considered the current mentoring programs to be ineffective because so few lawyers are aware of them. Mentoring, in the Task Force's view, is not occurring like it did before, and as a result, young lawyers are not identifying with the community.

Judge Battaglia then opened the floor for discussion about the Task Force Recommendations:

- Judge Battaglia first asked the representative of the MSBA to share his views. That member stated that the MSBA recommends the development of a professionalism course for experienced attorneys. He noted that the current course for newly admitted attorneys has been operating for twelve years and is under constant development. The MSBA representative found it interesting that the Task Force did not recommend a course for all experienced lawyers but only those considered errant. In developing a new course, the member stated, it is important to consider how to identify errant lawyers and how to measure their progress.
- One member of the Commission stated that he strongly believed that the class for new lawyers should not be used as a remedial course for experienced unprofessional lawyers.
- One participant said that a small percentage of lawyers are the ones who repeatedly conduct themselves unprofessionally. The fundamental issue, in that participant's view, is how to direct attention to that small percentage of lawyers. He believed that a remedial course, alone, will not solve the problem.
- Another participant agreed that a small percentage of lawyers create the problem of unprofessionalism.
- A member stated that the issue of a remedial course was a topic discussed extensively by the Task Force. He noted that a judge's contact with a case is very limited compared to the attorneys and that unprofessional conduct frequently occurs in the

litigation arena. Another member wondered how instances of unprofessional behavior would come to the attention of the judiciary. In his view, it is impossible to separate the judiciary from the solution.

- A participant suggested that masters might help to resolve issues of unprofessional conduct. He asked if the Task Force had considered the role of masters in addressing such problems. He stated that, currently, masters have no signature power for imposing sanctions.
- One member stated that unprofessionalism occurs not only during litigation, but also in the in transactional practice. He viewed the Commission as raising awareness about professionalism. The current impression of lawyers, in his view, is poor, and lawyers have an obligation to the general public to study what it means to be professional.
- Judge Battaglia noted that no one group of lawyers is responsible for the problems with unprofessional conduct.
- A member stated that the enemy of professionalism is the distance between people and that familiarity breeds collegiality and professionalism. He thought that the federal system of masters policing litigation might be a good model for solving some professionalism problems in the state.
- A member noted that he did not agree that the General Assembly must define the practice of law. The Court of Appeals, he stated, has always been used to define the unauthorized practice of law.
- A member stated that more people are doing what lawyers historically have done, and those tasks are taken less seriously. Lawyers, in this member's view, have to look for more ways to generate revenue.
- Another member noted a concern about the encroachment of accounting, insurance practice, and real estate into the practice of law. He believed that in the absence of a definition of the practice of law, it would be very difficult to prosecute those practicing law without a license.
- One member observed that in his transactional practice, he has noticed many accountants practicing corporate law, and accountants do not have the same practice standards as lawyers. The same problem exists with realtors.

- A member noted that there is a trend in other professions to assign lower level tasks to certified specialists. Perhaps the legal profession should consider a similar practice, he stated.
- Judge Adkins, representing the Judicial Disabilities Commission, stated that few complaints arise from sanctions imposed for discovery abuse. Many complaints, however, arise from cases in which judges have used imprisonment as a sanction for contempt. Judge Adkins stated that the Commission might consider studying a judge's power of contempt and how it can be implemented more practically.
- One member stated that the Task Force discussed how a verbal reprimand by a judge could be an effective sanction for unprofessional conduct.
- Judge Adkins stated that the sanction of assessing attorneys' fees is too hard to administer and that the process of imposing that sanction should be simplified.
- A member commented that unprofessional conduct occurred most frequently during discovery disputes.
- A participant stated that the discovery period is not the only time when lawyers behave unprofessionally. He stated that judges have difficulty policing discovery because so many different judges are, at times, assigned to a single matter. The Commission, in his view, should consider how to ensure that one judge could be assigned to work on a single matter.

The participant further stated that more could be done in the law schools to encourage professionalism.

- Another member said that clients can be one reason for unprofessional behavior in lawyers. Especially in the family law area, the member stated, clients encourage overly aggressive tactics. Judge Battaglia agreed that family law is recognized as an area where client expectations affect professionalism.
- A participant raised the issue of attorney advertising. He suggested that the Commission reconsider the State's standards for advertising.
- A member suggested that the Commission should use a positive message to encourage professionalism.
- Another member believed that a positive message can be sent when young lawyers are

mentored. The member insisted that the Court should consider doing more with mentoring.

- Several members discussed the value of mentoring and whether the younger lawyers or more experienced lawyers are more responsible for the problems with professionalism. One member believed that younger lawyers have problems with professionalism because they have yet to establish their practices.
- One participant noted that Delaware has a program for young lawyers, which requires them to work under the supervision of a more experienced attorney for six months before they may be admitted to the bar.

Judge Battaglia then reminded all Commission members to list their preferences for subcommittee assignment. She stated that she would circulate minutes of the meeting the following week and that she would call each Commission member who had been identified as a subcommittee chairperson. The Judge noted that, along with the minutes, she would distribute a list of the subcommittee assignments as well as the names of the interns who will be working with the Commission.

Judge Battaglia directed the subcommittees to identify, before the Commission's next meeting, how they planned to conduct their studies. At the next meeting, the Judge stated, each subcommittee will report on what type of methodology will be used to study the issues.

Judge Battaglia proposed Wednesday afternoons as the times for subsequent Commission meetings. She stated that tentative meeting dates will be set and distributed with the minutes. Judge Battaglia asked Commission members to notify her if the suggested dates are not possible. She expects the Commission to meet once per month, but she could not determine when the Commission's work would end.

Judge Battaglia thanked the Commission members for their attendance and adjourned the meeting.

**PROFESSIONALISM COMMISSION MEETING**  
**3/31/04**

**In Attendance**

The Hon. Sally Adkins  
The Hon. Robert Bell  
J. Donald Braden  
Professor Abe Dash  
David Densford  
Karen Federman-Henry  
Robert Ferguson  
Felecia Love Greer  
Master Cornelius Helfrich  
Kristy Hickman  
William Hudson  
Linda Lamone  
Thomas Lynch  
Nicholas Monteleone  
Linda Sorg Ostovitz  
James Otway  
Shelly Patterson  
Deborah Potter  
Charles "Mike" Preston  
The Hon. James Salmon  
C. Daniel Saunders  
Danny Seidman  
Dwight W. Stone  
The Hon. Dennis Sweeney  
Master Daryl Walters  
Professor Byron Warnken  
Dana Williams  
William Young

**Judge Battaglia's Law Clerks**

Shana Jones  
David Sommer

**Judge Battaglia's Interns**

Jim Carroll  
Susanna Sammet

**Absent**

Rignal Baldwin  
Michelle Barnes  
The Hon. Richard Bennett  
Laurence Cumberland  
The Hon. Jeannie Hong  
The Hon. Benson Legg  
Michael O'Connor  
Norman Smith